

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

SHANNON WADSWORTH,)	DOCKET NO.: PT-2003-117
)	
Appellant,)	
)	
-vs-)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW
THE DEPARTMENT OF REVENUE)	ORDER and OPPORTUNITY
OF THE STATE OF MONTANA,)	FOR JUDICIAL REVIEW
)	
Respondent.)	

The above-entitled appeal was heard on May 31, 2005, in Great Falls, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (Board). The notice of the hearing was given as required by law. The taxpayer, Shannon Wadsworth (Taxpayer), presented evidence and testimony in support of the appeal. Appraiser Jason Boggess and Region 2 Manager Chuck Pankratz represented the Department of Revenue (DOR). DOR presented evidence and testimony in opposition to the appeal. The appeal involves the valuation of a single-family dwelling located in Cascade County.

The duty of this Board is to determine the appropriate market value for the property based on a preponderance of the evidence. Testimony was taken from both the Taxpayer and the Department of Revenue, and exhibits from both parties were

received. The Board allowed the record to remain open for a period of time for the purpose of receiving post-hearing submissions from both parties.

Based on the evidence and testimony, the Board upholds the decision of the Cascade County Tax Appeal Board.

FACTUAL BACKGROUND

1. Due, proper, and sufficient notice was given of this matter, of the hearing, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.
2. The subject property is residential in character and is described as follows:

East 35 feet of Lot 12, Block 556, Great Falls 6th Addition. 517 4th Avenue South. City of Great Falls, County of Cascade, State of Montana. (Geocode #: 02-3015-11-2-15-04-0000)

3. The DOR's 2003 value is \$13,719 for the land and \$30,281 for the improvements (Appeal Form).
4. The appeal form indicates a requested value of \$7,000 for the land and \$10,025 for the improvements. The taxpayer modified his requested values at the STAB hearing to \$10,000 for the land and \$25,000 for the improvements.

5. The taxpayer filed an appeal with the Cascade County Tax Appeal Board (County Board) on September 15, 2003, requesting a land value of \$7,000 and an improvement value of \$10,025.
6. In its March 2, 2004 decision, the county board denied any reduction in value, stating:

After hearing testimony and reviewing exhibits, the Board finds the land value of \$13,719.00 and the building value of \$30,281.00 as set by the Dept. of Revenue to reflect the true market value of this property. This appeal is disapproved.

7. The taxpayer appealed that decision to this Board on April 2, 2004, stating:

The Dept. of Revenue denied access to all information including market approach to value. Effective Age information.

8. The Board allowed the record to remain open for the DOR to supplement the record with additional evidence that was requested by the taxpayer. The taxpayer was also given the opportunity to respond.

TAXPAYER'S CONTENTIONS

The Taxpayer asserts that the DOR had a predetermined value for the subject property.

Taxpayer Exhibit #1 is the Property Record Card (PRC) for the subject property. The taxpayer disagrees with the DOR's determination of the below grade area as basement versus what he calls cellar. Also, the DOR has appraised three additional plumbing fixtures for this property.

The biggest complaint the taxpayer has with the DOR's appraisal is with the determination of the effective age. Exhibit #2, states in part:

"Developing Support for the Estimates of Economic Life and Effective Age", step 6, Divide the percentage of total depreciation by the effective age of the property to yield the annual rate of depreciation. Remember, the actual age and effective age are nearly the same under normal maintenance. (Emphasis added)

The taxpayer asserts that the DOR's determination of an effective age is not accurate based upon the actual age of the structure. The property was constructed in 1910, and has only received normal maintenance. The DOR appraiser determined after an on-site internal/external inspection of the property, that the observed age was 41-45 years. Based on Exhibit #3, for a residential dwelling of fair construction quality, the depreciation with an observed age of 1960 is 55%. The taxpayer asserts that the actual age and effective age for this property are one and the same.

The taxpayer asserts that the DOR for tax purposes is required to appraise property based upon the cost approach to value in order to be compliant with equal protection laws of the State of Montana.

Taxpayer Exhibit #4 is the DOR's sales comparison approach for the subject property. Taxpayer Exhibit #5 is a listing of

the dollar adjustments for the comparable properties that the Computer Assisted Mass Appraisal System (CAMAS) selected in valuing the subject property. The taxpayer claims the adjustments have not been adequately supported by the DOR. Exhibit #6 is a photograph of the DOR's comparables.

Exhibits #7 and #8 are illustrations of depreciation tables.

Exhibit #9 lists a number of issues raised by the taxpayer and Exhibit #10 is an article titled "*Developing Support For The Estimates Of Economic Life and Effective Age.*"

DOR CONTENTIONS

The DOR relied upon the sales comparison approach in establishing the market value for the subject property (Exhibit H). Exhibit I is the actual sales comparison approach that illustrates the five comparable properties selected to establish a value of \$44,000. Summarized, this exhibit depicts the following:

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11/01/02	MONTANA COMPARABLE SALES					
	SUBJECT	COMP 1	COMP 2	COMP 3	COMP 4	COMP 5
Neighborhood ID	4 th Ave. SW	5 th Ave. NW	2 nd Ave. NW	2 nd Ave. NW	6 th Ave. NW	3 rd Ave NW
Land Description						
Total Acres	.10	.14	.14	.14	.14	.28
Dwelling Description						
# Stories	1	1	1	1	1	1
Style	Conventional	Conventional	Conventional	Conventional	Conventional	Conventional
Year Built/Effective Age	1910/1960	1953/1960	1960/1970	1959/1960	1951/1970	1955/1955
Basement	200	0	0	739	0	0
Bed/Tot/Bath/	2/4/1	2/4/1	2/4/1	2/5/1	3/5/1	2/5/1
Heat	Central	Non-Central	Central	Central	Central	Central
Finished Basement	0	0	0	120	0	0
Grade	4+	3+	4	5	4	5
CDU	FR	PR	AV	PR	PR	AV
First Floor Area	800	885	896	739	960	896
Total Living Area	800	885	896	739	960	896
Attached Garage	624	0	0	480	204	528
Detached Garage	336	0	0	0	0	420
Valuation						
Sale Date		9/99	5/00	2/99	4/99	11/01
Sale Price ¹		\$36,000	\$43,000	\$49,900	\$43,000	\$65,000
MRA Estimate ²	\$47,309					
Adjusted Sale		\$52,910	\$41,570	\$42,107	\$46,189	\$40,167
Comparability ³		82	83	85	87	87
Weighted Estimate	\$43,309					
Market Value	\$44,000					
Field Control Code Indicator	3					

The DOR testified that CAMAS applies dollar adjustments to the comparable sales for physical differences between the properties. The system also makes adjustments for the date of sale.

DOR Exhibit D is a table illustrating support for the effective age and depreciation for the subject property.

BOARD DISCUSSION

The Board allowed the record to remain open for an extended period of time for the DOR to provide the taxpayer with additional information with respect to the adjustments within the sales comparison approach to value. The taxpayer requested

1 Actual sales price was obtained from the Realty Transfer Certificate (RTC).

2 Multiple Regression Analysis – A statistical calculation.

3A numerical comparability indicator.

that this Board adopt his requested value when the DOR didn't reply in a timely fashion. The taxpayer's request for a default judgment is denied.

The taxpayer is under the presumption that the DOR for ad valorem tax purposes is required to appraise property by means of the cost approach to value. It is his opinion that equal protection under the Montana Constitution requires the DOR to appraise all property in the same manner, i.e. the cost approach to value. In **Albright v. Montana Department of Revenue, 281 Mont. 196,933 P.2d 815.**, the Court held that

B. SECTION 15-7-112, MCA Section 15-7-112, MCA, provides as follows: Equalization of valuations. The same method of appraisal and assessment shall be used in each county of the state to the end that comparable property with similar true market values and subject to taxation in Montana shall have substantially equal taxable values at the end of each cyclical revaluation program hereinbefore provided...

Section 15-8-111(2)(a), MCA (emphasis added). We conclude that when the Legislature defined "market value" as the price at which property would change hands in an arms-length sale, it evidenced its intent that the market data approach to value--and not just the cost approach--can and should be utilized by the Department when it appraises and assesses property...

Market value depends on the price that a willing buyer would pay a willing seller, taking into consideration relevant facts. Presumably, relevant facts would include the market and economic conditions prevailing at the time of sale...

§15-8-111(2)(b) (emphasis added). We conclude that the language of Section 15-8-111(2)(b), MCA, provides strong evidence that the Legislature did not intend for only one approach to value to be utilized when property is appraised and assessed. In fact, if the Legislature did intend for only one approach to be utilized, then §15-8-111(2)(b), MCA, would be superfluous.

Sections 15-7-301 through -311, MCA, are entitled the Realty Transfer Act. This Act requires the parties to a real estate transfer to submit to the Department a realty transfer certificate which states the price of the subject property. The Department then considers the information when it appraises property by the market data approach to estimating market value. Pursuant to § 15-7-302, MCA, the express purpose of this Act is "to obtain

sales price data necessary to the determination of statewide levels and uniformity of real estate assessments by the most efficient, economical, and reliable method." Section 15-7-302, MCA. We conclude that when the Legislature enacted this Act, it clearly intended to allow the Department to utilize the market data approach when it estimates market value.

The relevant provision of the Montana Constitution is Article VIII, Section 3, which provides as follows: "Property tax administration. The state shall appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by law." Mont. Const. art. VIII, § 3.

We conclude that the record from our Constitutional Convention clearly indicates the framers' understanding that productive value (the income approach) and the market data approach can both be utilized by the State when it attempts to "appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by law." Therefore, we conclude that, contrary to the District Court's determination, the framers of Article VIII, Section 3, did not intend for equalization to require the exclusive utilization of a single approach to estimating market value. Rather, the framers anticipated and intended that the State could utilize a number of different approaches, including the utilization of a market-based method, to "appraise, assess, and equalize the valuation of all property..."

The taxpayer testified that he sold the property approximately 2 years ago for \$43,000 on a contract for deed. He also indicated that in order to sell this property he was required to finance the property himself due to the physical condition.

This Board must evaluate the evidence that it has been presented and issue an opinion of value based upon that evidence. The best indication of value for the subject property is \$44,000 as indicated by the DOR's sales comparison approach to value.

CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter. §15-2-301, MCA.
2. §15-8-111 MCA. Assessment - market value standard - exceptions. (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.
3. Albright v. Montana Department of Revenue, 281 Mont. 196, 933 P.2d 815 (1997).
4. The appeal of the Taxpayer is hereby denied and the decision of the Cascade County Tax Appeal Board is upheld.

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Cascade County by the local Department of Revenue office at the value of \$44,000. The decision of the Cascade County Tax Appeal Board is upheld.

Dated this 11th day of August 2005.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

GREGORY A. THORNQUIST, Chairman

JOE R. ROBERTS, Member

SUE BARTLETT, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 11th day of August, 2005, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

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